

The Nuremberg Defense

A Commentary

By Nicholas von Hoffman

Lucky mail recipients these days are reading a Robotype letter from former Sen. James Buckley of New York, Clare Boothe Luce and ex-Nixon-Ford Secretary of the Treasury William Simon begging for contributions to something called the Citizens' Legal Defense Fund. Contrary to what the title may suggest, this isn't money to be used to defend citizens, but rather dough to be spent on be-

problem with that line of reasoning is that, unless you buy former President Nixon's contention on what's lawful, the persecution of the politically unpopular was illegal then and is illegal now.

There was no changing of the rules in mid-play, only a very belated decision to enforce them. James McCord, who recruited the Cubans, claimed he didn't know that what he was doing was illegal. A college graduate and CIA agent for years, and he doesn't know the Constitution says you need a search warrant to enter somebody else's house.

Buckley et al suggest that if anything illegal was done, then it was done at the behest of higher-ups, not the FBI operatives who may have done it. Of this there can be no doubt. Many, many highly placed people in government and probably outside of it aided and abetted FBI crimes.

In response to being asked if FBI agents might have done these things without the knowledge of their superiors, Quinn Tamm, a former assistant FBI director, replied:

"Absolutely not. It was impossible in the manner in which the FBI is set up... There is no way that an agent of the FBI would undertake a project such as this without his immediate superiors... knowing about it... Every time that Mr. Hoover went before the House Appropriations Committee on off-the-record discussion, he told the committee everything that the FBI was doing. He was proud of his black-bag jobs, wiretaps, the information he was getting. The Presidents knew about it."

Oddly enough, it's the fact that the most powerful people knew these things were being done and all but ordered them to be done, that makes the prosecution of the underlings so necessary. Otherwise this is what we're stuck with: While it's illegal for a President Nixon to authorize murder for the national security's sake, it's legal for his subordinates to execute the order to kill someone. That's the Nazis' Nuremberg defense.

Underlings must be punished for carrying out illegal orders. They shouldn't be punished as severely as overlings who are guilty of both originating the illegality and using the power of their office to force others to become their accomplices. Nevertheless, members of the bureaucracy must be supplied with a powerful motive for telling the boss, "No, I won't do it, because if somebody finds out about it my butt is in a sling and I'm up for losing my pension and parking place."

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Poster

half of ex-government employees—FBI—accused of violating people's rights by wire tapping and such.

Several ex-agents have been indicted, a fact which causes our three prominent letter writers to call for emergency action to stop further erosion of the morale and effectiveness of our top law-enforcement agency—the Federal Bureau of Investigation. But why should the morale of an agent who knows he never broke and entered a premise without a search warrant sag? As for those agents who did violate the law, assurances that they won't be prosecuted will make them feel good, but what about our morale?

What about the morale and effectiveness of the people transgressed upon? What about future candidates for persecution, people with currently unpopular opinions about current events? The knowledge that rich, powerful, well-placed persons such as these three are collecting money, not merely on behalf of the accused, but on behalf of the principle of having government agents punish people for their opinions, must assuredly have a chilling effect on those who might want to speak up and pop off.

We know, for instance, that FBI agents tried to get members of the Socialist Workers Party fired from their jobs. We know that agents passed on scurrilous and defamatory information concerning all sorts of people whose politics irritated officialdom, causing loss of employment, break-up of homes and social disgrace. Is the great bureaucratic machine to be told, in effect, that it will not be held accountable for such behavior?

Buckley-Luce-Simon take the position that any prosecution now of wire-tapping, burglary or the like committed some time ago would amount to switching rules and punishing operatives retroactively for acts which were legal then and aren't legal now. The